

The Supreme Court Committee on Standard Jury Instructions in Criminal Cases has submitted to the Florida Supreme Court a report proposing revisions to the Florida Standard Jury Instructions in Criminal Cases. The Committee proposes revisions to Instruction 28.9 – No Valid Driver’s License; and Instruction 28.11 – Suspended, Revoked or Cancelled License. The Committee also proposes new Instruction 28.9(a) – No Valid Commercial Driver’s License; and new Instruction 28.11(a) – Driving While License Revoked as a Habitual Traffic Offender

The Court invites all interested persons to comment on the committee’s proposals, which are reproduced in full below, as well as online at <http://www.floridasupremecourt.org/decisions/proposed.shtml>. An original and nine paper copies of all comments must be filed with the Court on or before November 15, 2005, with a certificate of service verifying that a copy has been served on the committee chair, The Honorable Dedee S. Costello, Bay County Courthouse, P.O. Box 1089, Panama City, FL 32402-1089, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. Electronic copies of all comments also must be filed in accordance with the Court's Administrative Order In Re: Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

## **IN THE SUPREME COURT OF FLORIDA**

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES (NO. 2005-6), CASE NO. SC05-1651

### **Proposal 1**

#### **28.9 NO VALID ~~OPERATOR’S OR CHAUFFEUR’S~~ DRIVER’S LICENSE** § 322.03, Fla.Stat.

**To prove the crime of No Valid ~~Operator’s or Chauffeur’s~~ Driver’s License, the State must prove the following two elements beyond a reasonable doubt:**

- 1. (Defendant) drove a motor vehicle upon a highway in this state.**
- 2. At the time, ~~The defendant did not have a valid operator’s or chauffeur’s~~ driver’s license issued recognized by the Department of Highway Safety and Motor Vehicles of the State of Florida.**

*Definitions*

*§322.01(15), Fla.Stat.*

**“Drive” means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic.**

*§§ 316.003(2), & 316.003(21), 322.01(26), Fla.Stat.*

**1. “Motor vehicle” means any vehicle which is self-propelled, including a “moped”, (and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails), but not including any bicycle or “moped” vehicle moved solely by human power, motorized wheelchair or motorized bicycle.**

**2. “Valid operator’s or chauffeur’s driver’s license” is means a operator’s or chauffeur’s driver’s license received from recognized by the department which has not expired, been suspended, revoked or canceled.**

*§ 322.01(10)(38), Fla.Stat.*

**3. “Highway” means the entire width between the boundary lines of every way or place publicly maintained when if any part thereof is open to the use of the public for purposes of vehicular travel traffic.**

*Optional Definitions*

**1. “Expired” means the license was not renewed on or before the expiration date.**

*§ 322.01(12)(a), (39), Fla.Stat.*

**2. “Suspended” means the privilege to drive a motor vehicle has been temporarily withdrawn.**

*§ 322.01(12)(b), (35), Fla.Stat.*

**3. “Revoked” means the privilege to drive a motor vehicle has been terminated.**

*§ 322.01(12)(c), (5), Fla.Stat.*

**4. “Canceled” means that a license which was issued through error or fraud has been declared void and terminated.**

**“Actual physical control” of a vehicle means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he][she] is actually operating the vehicle at the time.**

### **Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

### **Comment**

This instruction was adopted in 1981, and amended in 2005.

## Proposal 2

### **28.9(a) NO VALID COMMERCIAL DRIVER'S LICENSE**

§ 322.03, Fla.Stat.

**To prove the crime of No Valid Commercial Driver's License, the State must prove the following two elements beyond a reasonable doubt:**

- 1. (Defendant) drove a commercial motor vehicle upon a highway in this state.**
- 2. At the time, the defendant did not have a valid commercial driver's license issued by the Department of Highway Safety and Motor Vehicles of the State of Florida.**

#### Definitions

§322.01(15), Fla.Stat.

**"Drive" means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic.**

322.01(26), Fla. Stat.

**"Motor vehicle" means any vehicle which is self-propelled, including a "moped", (and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails), but not including any vehicle moved solely by human power, motorized wheelchairs or motorized bicycles.**

§322.01(8), Fla. Stat.

**"Commercial motor vehicle" means any motor vehicle used on the streets or highways, which:**

- a. Has a gross vehicle weight rating of 26,001 pounds or more;**
- b. Has a declared weight of 26,001 pounds or more;**
- c. Has an actual weight of 26,001 pound or more;**
- d. Is designed to transport more than 15 persons, including the driver, or;**
- e. Is transporting hazardous materials and is required to be placarded in accordance with Title 49 C.F.R. part 172, subpart F.**

§322.01(7), Fla. Stat.

**"Valid commercial driver's license" means a Class A, Class B, or Class C driver's license issued by the Department of Highway Safety and Motor**

**Vehicles of the State of Florida which has not expired, been suspended, revoked or canceled.**

*§ 322.01(38), Fla.Stat.*

**“Highway” means the entire width between the boundary lines of every way or place if any part thereof is open to the use of the public for purposes of vehicular traffic.**

*Optional Definitions*

**“Expired” means the license was not renewed on or before the expiration date.**

*§ 322.01(39), Fla.Stat.*

**“Suspended” means the privilege to drive a motor vehicle has been temporarily withdrawn.**

*§ 322.01(35), Fla.Stat.*

**“Revoked” means the privilege to drive a motor vehicle has been terminated.**

*§ 322.01(5), Fla.Stat.*

**“Canceled” means that a license has been declared void and terminated.**

**“Actual physical control” of a vehicle means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he][she] is actually operating the vehicle at the time.**

### **Lesser Included Offenses**

<b><u>No Valid Commercial Drivers License –§ 322.03</u></b>			
<b><u>CATEGORY ONE</u></b>	<b><u>CATEGORY TWO</u></b>	<b><u>FLA. STAT.</u></b>	<b><u>INS. NO.</u></b>
<u>No Valid Driver’s License</u>		<u>322.03</u>	<u>28.9</u>

### **Comment**

This instructions was first adopted in 2005.

### Proposal 3

#### 28.11 DRIVING WHILE LICENSE SUSPENDED, REVOKED OR CANCELED LICENSE, WITH KNOWLEDGE

§ 322.34, Fla. Stat.

To prove the crime of Driving While ~~his Operator's or Chauffeur's~~ [License] [or Driving Privilege] [Suspended], [Revoked], [Canceled], is ~~[Canceled]. [Suspended], [Revoked],~~ the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) drove a motor vehicle upon a highway in this state.
2. At the time, (Defendant's) His [license] or [driving privilege] was [suspended] [revoked] [canceled]. ~~[canceled], [suspended], [revoked].~~
3. ~~Notice of [cancellation], [suspension], [revocation] was given to the defendant.~~ At the time (Defendant) drove a motor vehicle upon a highway in this state, (Defendant) knew that [his] [her] [license] [driving privilege] was [suspended], [revoked], [canceled].

Whether (Defendant) knew of the [suspension] [revocation] [cancellation] is a question to be determined by you from the evidence.

*Give as applicable. See Fla. Stat. 322.251(1), (2), and 322.34(2), (3), (4).*

Proof that there exists an entry in the records of the Department of Highway Safety and Motor Vehicles showing that notice of the [suspension] [revocation] [cancellation] was given by personal delivery is proof that such notice was given.

Proof that there exists an entry in the records of the Department of Highway Safety and Motor Vehicles showing that notice of the [suspension] [revocation] [cancellation] was deposited in United States mail, first class postage prepaid, addressed to the licensee at his or her last known mailing address furnished to the department, is proof that such notice was sent.

**If you find that (Defendant) had been previously cited for driving while license [suspended] [revoked] [canceled], you may conclude that (Defendant) knew of the [suspension] [revocation] [cancellation].**

**If you find that (Defendant) admitted to knowing of the [suspension] [revocation] [cancellation], you may conclude that (Defendant) knew of the [suspension] [revocation] [cancellation].**

**If you find that (Defendant) had received a traffic citation that contained a provision notifying (Defendant) that [his] [her] license had been suspended, revoked, or cancelled, you may conclude that (Defendant) knew of the [suspension] [revocation] [cancellation].**

*Do not give if the suspension was for failure to pay a traffic fine or for a financial responsibility violation. See Fla. Stat. 322.34(2), 322.251(1), (2).*

**If you find that (Defendant) had received a [judgment] [order] rendered by [a court] [an adjudicatory body] which contained a provision notifying (Defendant) that [his] [her] license had been [suspended] [revoked] [cancelled], you may conclude that (Defendant) knew of the [suspension] [revocation] [cancellation].**

**If you find that the records of the Department of Highway Safety and Motor Vehicles include a [judgment] [order] rendered by [a court] [an adjudicatory body] which contains a provision notifying (Defendant) that [his] [her] license had been [suspended], [revoked] [cancelled], you are permitted to assume that (Defendant) knew [his] [her] license was [suspended] [revoked] [canceled]. This presumption, however, is rebuttable, and you may accept or reject the presumption depending upon the circumstances of the crime and the facts presented at trial.**

#### *Definitions*

*§ 322.01 (15), Fla. Stat.*

**1. “Drive” means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic.**

*§ 322.01(26), Fla. Stat.*

**1.2. “Motor vehicle” means any vehicle which is self-propelled, including a “moped,” (and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails) ~~excluding any bicycle but~~**

**including any “moped” but not any vehicle moved solely by human power, motorized wheelchair or motorized bicycle.**

§ 322.01(10) (38), Fla. Stat.

**2.3. “Highway” means the entire width between the boundary lines of every way or place publicly maintained when if any part thereof is open to the use of the public for purposes of vehicular travel traffic.**

§ 322.251, Fla. Stat.

**3. “Notice” means personal delivery or deposit in the United States mail in an envelope marked certified mail, postage prepaid, addressed to the defendant at his last known address furnished to the Department of Highway Safety and Motor Vehicles. Mailing by the department shall constitute notification.**

*Optional Definitions*

§ 322.01(12)(e) (5), Fla. Stat.

**3. “Canceled” means that a license which was issued through error or fraud has been declared void and terminated.**

§ 322.01(12)(a) (39), Fla. Stat.

**1. “Suspended” means the privilege to drive a motor vehicle has been temporarily withdrawn.**

§ 322.01(12)(b) (35), Fla. Stat.

**2. “Revoked” means the privilege to drive a motor vehicle has been terminated.**

**“Actual physical control” of a vehicle” means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he][she] is actually operating the vehicle at the time.**

§ 322.251(1), Fla. Stat.

*Failure by the defendant to receive the mailed order shall not affect or stay the effective date or term of the [cancellation], [suspension], [revocation] of the defendant’s driving privilege.*

### **Lesser Included Offenses**

~~No lesser included offenses have been identified for this offense.~~



<b><u>SUSPENDED, REVOKED OR CANCELED LICENSE - § 322.34</u></b>			
<b><u>CATEGORY</u></b> <b><u>ONE</u></b>	<b><u>CATEGORY</u></b> <b><u>TWO</u></b>	<b><u>FLA. STAT</u></b>	<b><u>INS. NO.</u></b>
<u>No Valid Driver's License</u>		<u>322.03</u>	<u>28.9</u>

### **Comment**

This instruction was first adopted in 1981, and amended in 2005 to reflect Laws of Florida 97-300, Section 40, effective October 1, 1997, but see *Gillman v. State*, 860 So.2d 1099 (Fla. 1<sup>st</sup> DCA 2003), at footnote 1.

## Proposal 4

### **28.11(a) DRIVING WHILE LICENSE REVOKED AS A HABITUAL TRAFFIC OFFENDER**

§ 322.34(5), Fla. Stat.

**To prove the crime of Driving While License Revoked as a Habitual Traffic Offender, the State must prove the following two elements beyond a reasonable doubt:**

1. **(Defendant) drove a motor vehicle upon a highway in this state.**
2. **At the time, (Defendant's) license was revoked as a habitual traffic offender.**

#### Definitions

§ 322.01 (15), Fla. Stat.

**“Drive” means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic.**

322.01(26), Fla. Stat.

**“Motor vehicle” means any vehicle which is self-propelled, including a “moped”, (and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails), but not any vehicle moved solely by human power, motorized wheelchair or motorized bicycle.**

§ 322.01(38), Fla. Stat.

**“Highway” means the entire width between the boundary lines of every way or place if any part thereof is open to the use of the public for purposes of vehicular traffic.**

**“Habitual traffic offender” is any person whose record, as maintained by the Department of Highway Safety and Motor Vehicles, shows that [he][she] has been designated a Habitual Traffic Offender, resulting in [his][her] privilege to drive a motor vehicle having been revoked.**

§ 322.01(35), Fla. Stat.

**“Revoked” means the privilege to drive a motor vehicle has been terminated.**

Optional Definition

**“Actual physical control” of a vehicle” means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he][she] is actually operating the vehicle at the time.**

**Lesser Included Offenses**

<b><u>Driving While License Revoked as a Habitual Traffic Offender - § 322.34(5), Fla. Stat.</u></b>			
<b><u>CATEGORY ONE</u></b>	<b><u>CATEGORY TWO</u></b>	<b><u>FLA. STAT.</u></b>	<b><u>INS. NO.</u></b>
<u>No Valid Driver’s License</u>		<u>322.03</u>	<u>28.9</u>

**Comment**

This instruction was first adopted in 2005.